THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 8th day of March,2007

W.P.No.351 of 2007

Between:-

Bharat Coca-Cola Bottling South East Pvt.Ltd., now renamed as Hindustan Coca Cola Beverages Private Limited, rep. by its Head – HR (South) Mr.G.V.R.K.Raju … Petitioner

and

The Presiding Officer, Labour Court-II, First Floor, Chandra Vihar, M.J. Road, Hyderabad and another … Respondents

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ORDER:

This Writ Petition is filed being aggrieved by an Order dated 4-12-2006 made in IA (SR) No.1064 of 2006 in I.D.No.100 of 2005 on the file of Labour Court-II, Hyderabad.

It appears, respondent No.2 raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') before the Labour Court-II, Chandra Vihar, M.J. Road, Hyderabad terminating his services by the petitioner-management. While that being so, the management filed a petition in IA(SR) No.1064 of 2006 under Section 11(3) of the Act to decide the preliminary issue – whether the respondent No.2 herein is a workman within the meaning of Section 2(s) of the Act. Initially, the said application was returned at the beginning, with an objection that the enquiry under the Act is a summary in nature and there will not be any issues; hence, the question of deciding preliminary issue will not arise and the disputed point will be decided along with other disputed points in the Award. However, the same was resubmitted with a request for being heard about the maintainability. Accordingly, after hearing both the parties, the Labour Court came to the conclusion that even the preliminary issue as to whether the respondent-petitioner is a 'workman' within the meaning of Section 2(s) of the Act is a mixed question of law and fact. Therefore, the preliminary issue mixed with facts and law cannot be answered as a preliminary issue without entering into evidence.

Further, the main relief sought for in the I.D. is questioning the illegal termination, which is larger and second issue and it depends on the result of the first issue i.e. whether the employee is a workman or not; but to determine both the issues, evidence is required; therefore, it is proper to direct both the parties to lead evidence on all the disputed issues including the preliminary issue. Aggrieved by the same, the present Writ Petition is filed.

It is the contention of the learned counsel for the petitioner that once a preliminary issue - as to whether the respondent No.2 herein is a workman within the meaning of Section 2(s) of the Act and whether the Labour Court has jurisdiction to entertain such a petition - is raised, which goes to the root of the industrial dispute, it has to be necessarily decided first and it cannot be decided along with all other issues involved in the I.D. He further contended that framing and deciding the preliminary issue, in the instant case, along with other issues would undoubtedly wastage of precious judicial time inasmuch as once the findings are recorded on the preliminary issue that the 2nd respondent is not a workman, there ends the matter, particularly, because the evidence, documentary is overwhelmingly in favour of the petitioner. In this regard, learned counsel for the petitioner relied upon various Judgments as stated in the affidavit filed in support of the Writ Petition and further asserted that the judgments cited by the petitioner were not properly considered by the Labour Court and simply placed reliance on the Judgment of the Supreme Court in **D.P. MAHESWARI v. DELHI ADMINISTRATION**[1] which was reconsidered by the very same Bench in a later Judgment i.e. **WORKMEN, HINDUSTAN LEVER LIMITED v. MANAGEMENT OF M/s. HINDUSTAN LEVER LTD.**[2] He further strenuously contended that the Labour Court was

not right in directing the petitioner to lead evidence on both the aspects i.e. as to deciding the jurisdiction of the Labour Court to entertain the petition, since the respondent No.2 was not a workman within the meaning of Section 2(s) of the Act and whether the termination of the 2nd respondent herein was illegal or not.

There is no necessity of going into all the details. It is settled principle of law that the proceedings before the Industrial Tribunal/Labour Court are summary in nature and the labourious practice of framing issues and answering the preliminary as such are not contemplated. May be, in a given case, the preliminary issue can be decided separately and only thereafter, if necessary, all other issues can be addressed. When a mixed question of fact and law arises for decision on a particular issue, it is always desirable to avoid deciding the issues separately by calling witnesses more than once. This is one such situation where the Labour Court has rightly taken a decision to try both the points together, since for determining both the issues evidence is required. Therefore, the Labour Court has rightly while relying upon the Judgment of the Supreme Court in **D.P.MAHESWARI**'s case (1 supra) dismissed the petition at SR stage and both the parties were directed to lead evidence on all the points together. I am of the opinion that the Labour Court has rightly averted the situation of leading evidence more than once and has rightly directed both the parties to lead evidence, so that both the issues can be decided at once and there is no much complication in this case. The points/issues require to be decided are - whether the termination of the 2nd respondent was illegal and whether the 2nd respondent is a 'workman' within the meaning of Section 2(s) of the Act. Since both of them require leading of evidence, the Labour Court has rightly taken a decision directing both the parties to lead evidence for the purpose of

deciding both the issues together and rightly rejected to decide only the jurisdictional aspect as a preliminary issue, which cannot be decided without leading evidence to avoid delay and inconvenience to both the parties

For all the above reasons, the Writ Petition is devoid of merits and is liable to be dismissed; accordingly, it is dismissed. No order as to costs.

08-3-2007

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[1] 1983(2) LLJ 425

[2] 1984(1) LLJ 388